IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

1. Ganesh Ram Vs. State of Rajasthan & Anr.
S.B.CR. MISC. PETITION NO.1029/2007

2. Ganesh Ram Vs. State of Rajasthan & Anr.
S.B.CR. MISC. PETITION NO.1030/2007

3. Ganesh Ram Vs. State of Rajasthan & Anr.
S.B.CR. MISC. PETITION NO.1031/2007

4. Ganesh Ram Vs. State of Rajasthan & Anr.
S.B.CR. MISC. PETITION NO.1032/2007

5. Ganesh Ram Vs. State of Rajasthan & Anr.
S.B.CR. MISC. PETITION NO.1033/2007

6. Ganesh Ram Vs. State of Rajasthan & Anr.
S.B.CR. MISC. PETITION NO.1034/2007

7. Ganesh Ram Vs. State of Rajasthan & Anr.
S.B.CR. MISC. PETITION NO.1035/2007

8. Ganesh Ram Vs. State of Rajasthan & Anr.
S.B.CR. MISC. PETITION NO.1036/2007

9. Ganesh Ram Vs. State of Rajasthan & Anr.
S.B.CR. MISC. PETITION NO.1037/2007

DATE OF ORDER :: July 18, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.N.A.Rajpurohit, for the petitioner.

BY THE COURT:

All these criminal miscellaneous petitions involve common question of law and between the same parties and, therefore, they are heard together and decided by this order taking Cr.Misc. Petition No.1029/2007 as leading case.

By this criminal misc. petition under section 482 Cr.P.C., the petitioner has challenged the order dt. 9.5.2007 passed by learned Sessions Judge, Pali (for short `the revisional court' hereinafter), whereby the revision petition filed by the petitioner against the order dt. 27.11.2006 passed by the Judicial Magistrate, Pali (for short `the trial court' hereinafter) in Cr. Original Case No.241/2006 was dismissed.

I have heard learned counsel for the petitioner. Carefully gone through the orders passed by both the courts below.

Non-petitioner No.2 has filed a criminal complaint under section 138 of the Negotiable Instruments Act, 1881 (for short `the Act' hereinafter) against the petitioner on the ground that the petitioner issued cheques in favour of non-petitioner No.2, which on presentation to the bank were returned unpaid and dishonoured with the endorsement that the petitioner has insufficient fund in bank account and a notice demanding cheque amount within stipulated period of 15 days from the receipt of the notice was served on the petitioner. Thereafter, a complaint under section 138 of the Act was filed within the period of limitation. The statements of the complainant and his witnesses have been recorded. The matter is at the stage of defence evidence. The petitioner filed an application. Reply to the application has been filed by the non-petitioner No.2 stating therein that the petitioner and non-petitioner No.2 were running a business in the name of M/s Ambica Emporium, however, the firm has been dissolved and it is the non-petitioner No.2, who has retired from the firm. At the time of dissolution of firm, the petitioner issued certain cheques, which on presentation were dishonoured and the proceedings under section 138 of the Act were initiated. All the documents i.e. Partnership, agreement, sale-deed, cash book etc. are in power and possession of the petitioner since the petitioner has been running the business after dissolution of the firm, however, nothing was with him

except the photostat copy of agreement, that was filed by the non-petitioner No.2 before the trial court. It also appears from the reply filed by the non-petitioner No.2 that the petitioner earlier filed a similar application, which came to be dismissed on 11.9.2006 and that order has attained the finality. In this view of the matter, in my view, both the courts below were justified in dismissing the application. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of any court. The petitioner failed to establish that the alleged documents are in power and possession of the non-petitioner No.2, on the contrary the non-petitioner No.2 came with a case that the petitioner is in power and possession of the alleged documents as the petitioner has been running the business of the firm after its dissolution and non-petitioner No.2 having ceased to be partner of the firm. At any rate, the non-petitioner No.2 has retired from partnership and in this view of the matter no case for interference under section 482 Cr.P.C. is made out.

Consequently, all the criminal misc. petitions are dismissed.

[H.R.PANWAR],J.

m.asif/-